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C O N F I D E N T I A L SECTION 01 OF 04 COLOMBO 001582

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DEPARTMENT FOR SCA/INS

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TAGS: [PGOV](#) [PREL](#) [PTER](#) [PHUM](#) [MOPS](#) [CE](#)

SUBJECT: SRI LANKA: EMINENT PERSONS FRUSTRATED, DECIDE TO
CALL IT QUILTS IN FEBRUARY

REF: COLOMBO 1358 (AND PREVIOUS)

Classified By: Ambassador Robert O. Blake, Jr. Reasons: 1.4(b, d).

11. (C) SUMMARY: The members of the International Independent Panel of Eminent Persons assisting the Sri Lankan Presidential Commission of Inquiry into Human Rights Abuses feel their efforts have been stymied and concluded they can do little more to influence events in a positive way. A letter from the Presidential Secretariat to the Commission putting off limits any investigation of the Attorney General's previous handling of the Commission's caseload was a "show-stopper," U.S. Eminent Person Gene Dewey reported. There is a unanimous consensus within the panel not to seek or accept an extension of its mandate beyond the term until February 2008. Panel members will seek to manage their departure in such a way as to limit the government's ability to blame them for the end of their efforts. The panel plans to send a letter to President Rajapakasa on November 30 making its position clear. On December 17, the panel will forward its third interim report and issue a public statement. The panel's professional staff are preparing to deal with an increasingly tense relationship with the government and making plans to tighten security. Embassy recommends that U.S. and partner countries consider issuing strong statements on the deterioration of the human rights environment in Sri Lanka in proximity to the December session of the Human Rights Council in Geneva, noting the Commission's lack of progress. End summary.

PRESIDENT EXTENDS COMMISSION'S MANDATE
BUT PLACES AG'S CONDUCT OFF LIMITS

12. (C) On November 13, the panel of Eminent Persons (IIGEP), with eight of its eleven members present for a plenary, met the Presidential Commission of Inquiry (CoI). The Commission informed IIGEP officially that the President had extended the CoI's mandate until November 2008. The COI chairman then read the letter of extension from the Presidential Secretariat (with a deadpan expression, according to U.S.

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Eminent Person Gene Dewey). The letter, signed by the President's Chief of Staff Lalith Weeratunga, contained a "clarification" of the CoI's original mandate. This, although couched in soft language, amounted to a directive - not to look into the conduct of previous criminal investigations of the cases within the CoI's mandate, - not to examine the role of the Attorney General's office in those cases, and - not to call any of the Attorney General's staff as witnesses.

In addition, the Presidential Secretariat suggested that the CoI continue to avail itself of the services of the Attorney General's office as counsel to the CoI.

¶3. (C) In a private meeting with Ambassador, DCM and Pol Chief, U.S. Eminent Person Gene Dewey stated there was a strong consensus among IIGEP members that this was a "show-stopper." He related that in a joint meeting between the IIGEP and CoI, Indonesian IIGEP member Darusman, speaking for the group, asked the CoI if they understood that this probably meant the end of the IIGEP's involvement. Dewey said at least one IIGEP member was in favor of resigning en masse immediately. Others proposed a "moratorium," meaning that the IIGEP members would refuse to participate in further CoI proceedings unless the government withdraws the offending "clarification" to the CoI mandate. Ambassador urged that if IIGEP decided to pull out, it plan its exit strategy in a way to limit the GSL's efforts to "blame" the international community for the shortcomings of the CoI/IIGEP process, which it surely would do.

INDEPENDENT PANEL BRIEFS DONOR COUNTRIES

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¶4. (C) DCM attended a November 14 meeting of donor country ambassadors and charges with IIGEP members. Justice Bhagwati opened the session by noting that IIGEP had "encountered several problems." Gene Dewey followed, remarking that IIGEP was "at a turning point." He said there has been very little progress in the investigations of the cases. He acknowledged that, partly as a result of IIGEP, the CoI had begun, to some extent, to take ownership of the process. However, he noted deep concern about the letter from the Presidential Secretariat to the CoI chairman, which, Dewey said, placed

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the Attorney General's office "above questioning" and declared off bounds investigations undertaken prior to the initiation of the CoI. He called the letter a "bombshell."

¶5. (C) All ambassadors/charges noted the importance of the independent nature of IIGEP and the commitment of their embassies not to impose their views on IIGEP. Canadian High Commissioner Bogdan noted that the CoI was clearly not operating according to international standards. She told the group that several CoI members had expressed privately to her that they are dissatisfied and do not want the CoI to continue. Whatever happens with the CoI, we must maintain pressure at Geneva on the GSL for its poor human rights performance, Bogdan concluded. A way forward for IIGEP, if there is one, should be tied to Geneva. Canada would support the consensus with regard to the continuation of IIGEP. She reminded that Louise Arbour said that a one-year extension would be "waste of time" (i.e., not enough time to make meaningful progress).

¶6. (C) The Netherlands Charge d'Affaires concurred that concerns about the CoI should be raised in Geneva. He added that the Netherlands did not expect results from the CoI and would not continue to finance IIGEP beyond its one-year term. The Australian High Commissioner said that one value of IIGEP is the information that had been gleaned. Clearly, the

slow pace of investigations is of concern. At this rate, it would take the CoI a decade to complete its work. The GOA will not continue funding indefinitely. The UK High Commissioner stressed the importance of consensus; a situation in which some EPs left and some stayed on would be unacceptable. The CoI/IIGEP had given the GSL the ability to claim it is taking action to investigate human rights abuses. The UK would favor a swifter rather than slower exit, he said, but emphasized that IIGEP should reach a consensus decision.

¶7. (C) The Japanese Ambassador was the only diplomatic representative who spoke in favor of IIGEP continuing beyond its one-year mandate. He said that in Sri Lanka "unfulfilled commitments must be accepted." He viewed the CoI/IIGEP as the only prospect for investigating human rights abuses and opined that work is "progressing steadily, even if at a slower pace than we would like."

¶8. (C) DCM made four points: (1) If IIGEP decided to not seek an extension of its mandate (or to pull out short of one year) it must carefully plan its exit strategy to avoid, to the extent possible, giving the GSL a pretext to "blame" the international community for the shortcomings/lack of progress of the CoI/IIGEP mechanism. (2) We recommend that IIGEP consider issuing a statement expressing its concerns about the process that could be released prior to the December 10 meeting of the Human Rights Council in Geneva. (3) We recommend that embassies weigh in with capitals in support of a strong statement in Geneva that includes concerns about GSL interference in the CoI and the failure of the COI to achieve significant progress. (4) IIGEP should place on record in written form its concerns about the Weeratunga letter.

¶9. (C) Bhagwati summed up, saying that the CoI/IIGEP process
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faces several difficulties, some of which were of the GSL's making. Many potential witnesses were not prepared to come forward and give evidence. Still, IIGEP was trying to fulfill its mandate. There had been three reports thus far and a fourth was being drafted. The problems identified in the reports must be addressed if IIGEP is to continue. Ultimately, he said, IIGEP's work will benefit the people of Sri Lanka by helping them people of Sri Lanka achieve greater observance of human rights.

PANEL DECIDES TO WORK UNTIL MANDATE EXPIRES

¶10. (C) IIGEP met President Rajapaksa on November 16 to make clear their concerns. According to members of the IIGEP Secretariat who briefed DCM and Pol Chief on November 23, the

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President and his advisors said they would prepare a letter to IIGEP explaining their previous "clarification" putting an investigation of the Attorney General's prior handling of the CoI cases off-limits. According to our interlocutors, IIGEP expressed little interest in receiving such a letter, since the harm done by the original "clarification" could not be made good. Rather, they remarked, it had become abundantly clear that the government did not intend for the CoI inquiries to produce results.

¶11. (C) In a meeting later on November 23, IIGEP members resolved not to seek an extension, but to try to wind up work on schedule in February 2008. IIGEP plans to send a letter to the President on November 30 stating that nearly a year's effort had produced very little of value. IIGEP's concerns had largely been ignored; their suggestions for remedying the deficiencies of the CoI had had little impact. The letter would state that the IIGEP saw no point in continuing its work beyond the February 2008 expiration of its mandate. IIGEP would simultaneously release a letter to the donor countries explaining its position.

WITNESS PROTECTION LEGISLATION IN LIMBO

¶12. (C) The IIGEP assistants told us that they had no idea how the CoI could proceed to hold planned public hearings in December, with none of the necessary groundwork in place. The necessary amendment to the 1948 Act establishing Commissions of Inquiry would not be ready. This meant that, without the power to compel law enforcement, security officials, and others with relevant information to appear, any such public sessions would be -- like the six months of in-camera "investigations" the CoI had conducted to date -- "a waste of time." IIGEP staff noted that the Cabinet had reportedly passed the new Witness Protection Law but was keeping it secret. The Supreme Court would rule in advance on its constitutionality before the law goes to Parliament. However, there was reason to fear that the Attorney General's staff had gutted the law of provisions that would protect witnesses effectively, they observed.

PANEL PREPARES TO WIND UP WORK; SECURITY CONCERNS

¶13. (C) The IIGEP staff said that it would not be possible to complete drafting of the next IIGEP public statement and release it prior to the December session of the Human Rights Council because of the need to clear it with all IIGEP members and submit the statement to the GSL two weeks in advance. IIGEP therefore planned to send its third interim report to President Rajapaksa on December 17 and release a public statement at the same time. IIGEP's tentative schedule was to meet for the last time in the second half of February, approve its final report to the President, and craft a public statement to be released two weeks later. In addition, IIGEP is planning a separate "legacy report" which

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would either be made public, or given to the donor countries and international human rights organizations on a confidential basis. (We noted that in the latter case, the

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report would almost certainly leak.)

¶14. (C) COMMENT: It is perhaps unfortunate that IIGEP will not release its next statement before the December 10 meeting of the Human Rights Council in Geneva. On the other hand, this will avoid a repetition of charges that the IIGEP was timing its announcements to influence the HRC, which could complicate Louse Arbour's efforts to negotiate terms for an enhanced presence of her office in Sri Lanka. Embassy recommends that the U.S. and like-minded countries consider issuing strong statements on the human rights situation in Sri Lanka around the time of the HRC, possibly in Geneva, noting that the CoI has made little progress. The only way IIGEP will be able to counter the government's likely propaganda barrage at the release of its final report effectively is to detail the efforts IIGEP has made to point out and correct the CoI's deficiencies, and the government's repeated refusal to entertain them. The atmosphere will probably become increasingly confrontational after IIGEP sends its letter to the President on November 30, and even more so after release of its next public statement December

¶17. IIGEP secretariat members are preparing to take additional measures to safeguard their own security and that of the confidential information they have accumulated over the last several months.

BLAKE